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9 **BEFORE THE**
BOARD OF REGISTERED NURSING
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Statement of Issues
Against:

Case No. 2013-734

13 **GARRETTE MICHAEL COOK**

STATEMENT OF ISSUES

14 **Registered Nurse Applicant**

15 Respondent.

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18 Complainant alleges:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Statement of Issues solely in
21 her official capacity as the Executive Officer of the Board of Registered Nursing, Department of
22 Consumer Affairs.

23 2. On or about March 1, 2012, the Board of Registered Nursing, Department of
24 Consumer Affairs received an application for a Registered Nurse License from Garrette Michael
25 Cook (Respondent). On or about February 18, 2012, Garrette Michael Cook certified under
26 penalty of perjury to the truthfulness of all statements, answers, and representations in the
27 application. The Board denied the application on June 27, 2012.

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JURISDICTION

3. This Statement of Issues is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2736 of the Code provides, in pertinent part, that the Board may deny a license when it finds that the applicant has committed any acts constituting grounds for denial of licensure under section 480 of that Code.

STATUTORY PROVISIONS

5. Section 475 of the Code states:

(a) Notwithstanding any other provisions of this code, the provisions of this division shall govern the denial of licenses on the grounds of:

(1) Knowingly making a false statement of material fact, or knowingly omitting to state a material fact, in an application for a license.

(2) Conviction of a crime.

(3) Commission of any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another.

(4) Commission of any act which, if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

(b) Notwithstanding any other provisions of this code, the provisions of this division shall govern the suspension and revocation of licenses on grounds specified in paragraphs (1) and (2) of subdivision (a).

(c) A license shall not be denied, suspended, or revoked on the grounds of a lack of good moral character or any similar ground relating to an applicant's character, reputation, personality, or habits.

6. Section 480 of the Code states:

(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another.

1 (3)(A) Done any act that if done by a licentiate of the business or profession in
2 question, would be grounds for suspension or revocation of license.

3 (B) The board may deny a license pursuant to this subdivision only if the crime
4 or act is substantially related to the qualifications, functions, or duties of the business
5 or profession for which application is made.

6 (b) Notwithstanding any other provision of this code, no person shall be denied
7 a license solely on the basis that he or she has been convicted of a felony if he or she
8 has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with
9 Section 4852.01) of Title 6 of Part 3 of the Penal Code or that he or she has been
10 convicted of a misdemeanor if he or she has met all applicable requirements of the
11 criteria of rehabilitation developed by the board to evaluate the rehabilitation of a
12 person when considering the denial of a license under subdivision (a) of Section 482.

13 (c) A board may deny a license regulated by this code on the ground that the
14 applicant knowingly made a false statement of fact required to be revealed in the
15 application for the license.

16 7. Section 482 of the Code states:

17 Each board under the provisions of this code shall develop criteria to evaluate
18 the rehabilitation of a person when:

19 (a) Considering the denial of a license by the board under Section 480; or

20 (b) Considering suspension or revocation of a license under Section 490.

21 Each board shall take into account all competent evidence of rehabilitation
22 furnished by the applicant or licensee.

23 8. Section 2761 of the Code states, in pertinent part:

24 The board may take disciplinary action against a certified or licensed nurse or
25 deny an application for a certificate or license for any of the following:

26 (a) Unprofessional conduct, which includes, but is not limited to, the
27 following:

28 (f) Conviction of a felony or of any offense substantially related to the
qualifications, functions, and duties of a registered nurse, in which event the record of
the conviction shall be conclusive evidence thereof.

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9. Section 2762 of the Code states, in pertinent part:

In addition to other acts constituting unprofessional conduct within the meaning
of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person
licensed under this chapter to do any of the following:

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1 (a) Obtain or possess in violation of law, or prescribe, or except as directed by
2 a licensed physician and surgeon, dentist, or podiatrist administer to himself or
3 herself, or furnish or administer to another, any controlled substance as defined in
Division 10 (commencing with Section 11000) of the Health and Safety Code or any
dangerous drug or dangerous device as defined in Section 4022.

4 (b) Use any controlled substance as defined in Division 10 (commencing with
5 Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous
6 device as defined in Section 4022, or any alcoholic beverages, to an extent or in a
7 manner dangerous or injurious to himself or herself, any other person, or the public or
8 to the extent that such use impairs his or her ability to conduct with safety to the
9 public the practice authorized by his or her license..

10 (c) Be convicted of a criminal offense involving the prescription, consumption,
11 or self-administration of any of the substances described in subdivisions (a) and (b) of
12 this section, or the possession of, or falsification of a record pertaining to, the
13 substances described in subdivision (a) of this section, in which event the record of
14 the conviction is conclusive evidence thereof.

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16 10. Section 2765 of the Code states:

17 A plea or verdict of guilty or a conviction following a plea of nolo contendere
18 made to a charge substantially related to the qualifications, functions and duties of a
19 registered nurse is deemed to be a conviction within the meaning of this article. The
20 board may order the license or certificate suspended or revoked, or may decline to
21 issue a license or certificate, when the time for appeal has elapsed, or the judgment of
22 conviction has been affirmed on appeal or when an order granting probation is made
23 suspending the imposition of sentence, irrespective of a subsequent order under the
24 provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his
25 or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of
26 guilty, or dismissing the accusation, information or indictment.

27 REGULATORY PROVISIONS

28 11. California Code of Regulations, title 16, section 1444, states:

A conviction or act shall be considered to be substantially related to the
qualifications, functions or duties of a registered nurse if to a substantial degree it
evidences the present or potential unfitness of a registered nurse to practice in a
manner consistent with the public health, safety, or welfare. Such convictions or acts
shall include but not be limited to the following:

(a) Assaultive or abusive conduct including, but not limited to, those violations
listed in subdivision (d) of Penal Code Section 11160.

(b) Failure to comply with any mandatory reporting requirements.

(c) Theft, dishonesty, fraud, or deceit.

(d) Any conviction or act subject to an order of registration pursuant to Section
290 of the Penal Code.

12. California Code of Regulations, title 16, section 1445 states:

(a) When considering the denial of a license under Section 480 of the code, the board, in evaluating the rehabilitation of the applicant and his/her present eligibility for a license will consider the following criteria:

(1) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.

(2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial which also could be considered as grounds for denial under Section 480 of the code.

(3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).

(4) The extent to which the applicant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant.

(5) Evidence, if any, of rehabilitation submitted by the applicant.

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COST RECOVERY

13. Code section 125.3 provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

CONTROLLED SUBSTANCES AT ISSUE

14. Methamphetamine is a Schedule II controlled substance as designated by Health and Safety Code section 11055, subdivision (d)(2), and is a dangerous drug pursuant to Business & Professions Code section 4022.

FIRST CAUSE FOR DENIAL OF APPLICATION

**(February 14, 2003 Criminal Convictions for Possession of
Drug Paraphernalia and Syringe on November 27, 2002)**

15. Respondent's application is subject to denial under sections 480, subdivisions (a)(1) and (a)(3)(A) of the Code in that he was convicted of crimes that are substantially related to the qualifications, duties, and functions of a registered nurse. Said conduct would be a ground for discipline under 2761, subdivision (f) of the Code for a licensed registered nurse. The circumstances are as follows:

1 a. On or about February 14, 2003, in a criminal proceeding entitled *People of the*
2 *State of California v. Garrett Michael Cook*, in San Diego County Superior Court, Case Number
3 M884020, Respondent was convicted of possession of drug paraphernalia in violation of Health
4 and Safety Code section 11364 and possession of a syringe in violation of Business and
5 Professions Code section 4140, misdemeanors.

6 b. As a result of the convictions, on or about February 14, 2003, Respondent was
7 sentenced to three years probation and ordered to attend 12-step meetings and pay fees and fines.

8 c. The circumstances that led to the convictions are that on or about the evening of
9 November 27, 2002, at approximately 20:00 hours, an officer with the San Diego Police
10 Department stopped Respondent for a traffic violation and observed drug paraphernalia and a
11 syringe in Respondent's vehicle.

12 **SECOND CAUSE FOR DENIAL OF APPLICATION**

13 **(May 13, 2003 Criminal Conviction for Under the Influence of the Controlled Substance,**
14 **Methamphetamine, on March 8, 2003)**

15 16. Respondent's application is subject to denial under sections 480, subdivisions (a)(1)
16 and (a)(3)(A) of the Code in that he was convicted of crimes that are substantially related to the
17 qualifications, duties, and functions of a registered nurse. Said conduct would be a ground for
18 discipline under 2761, subdivision (f) of the Code for a licensed registered nurse. The
19 circumstances are as follows:

20 a. On or about May 13, 2003, in a criminal proceeding entitled *People of the State*
21 *of California v. Garrett Michael Cook*, in San Diego County Superior Court, Case Number
22 M893794, Respondent was convicted of being under the influence of the controlled substance,
23 Methamphetamine, in violation of Health and Safety Code section 11550 (a), a misdemeanor.

24 b. As a result of the conviction, on or about May 13, 2003, Respondent was
25 sentenced to five years probation, ordered to complete drug treatment and participate in drug
26 testing, complete 20 days in the Public Service Work Program, and pay fees and fines.

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1 **FOURTH CAUSE FOR DENIAL OF APPLICATION**

2 **(Possession of the Controlled Substance Methamphetamine)**

3 18. Respondent's application is subject to denial under sections 480, subdivision (a)(3)(A)
4 of the Code in that on or about September 2, 2003, Respondent was convicted of criminal
5 offenses involving the possession of Methamphetamine, as described in paragraph 17, above.
6 Such conduct would be a ground for discipline under section 2762, subdivision (a) of the Code
7 for a licensed registered nurse.

8 **FIFTH CAUSE FOR DENIAL OF APPLICATION**

9 **(Use of the Controlled Substance Methamphetamine)**

10 19. Respondent's application is subject to denial under sections 480, subdivision (a)(3)(A)
11 of the Code in that on or about May 13, 2003, Respondent was convicted of criminal offenses
12 involving being under the influence of the controlled substance Methamphetamine, as described
13 in paragraph 16, above. Such conduct would be a ground for discipline under section 2762,
14 subdivision (b) of the Code for a licensed registered nurse.

15 **SIXTH CAUSE FOR DENIAL OF APPLICATION**

16 **(Convictions of Drug-Related Offenses for Use and Possession of the**
17 **Controlled Substance Methamphetamine)**

18 20. Respondent's application is subject to denial under sections 480, subdivision (a)(3)(A)
19 of the Code in that on or about May 13, 2003 and September 2, 2003, Respondent was convicted
20 of criminal offenses involving use and possession of the controlled substance Methamphetamine,
21 as described in paragraphs 16 and 17 above. Such conduct would be a ground for discipline
22 under section 2762, subdivision (c) of the Code for a licensed registered nurse.

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
and that following the hearing, the Board of Registered Nursing issue a decision:

1. Denying the application of Garrette Michael Cook for a Registered Nurse;
2. Taking such other and further action as deemed necessary and proper.

DATED: March 12, 2013


LOUISE R. BAILEY, M.ED., RN
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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